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April 15, 2022

VIA EMAIL AND ECF

The Honorable Tonianne J. Bongiovanni
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: *UMG Records, Inc., et al. vs. RCN Telecom Services, LLC, et al.*
Civil Action No. 3:19-cv-17272-MAS-TJB

Dear Judge Bongiovanni:

This firm represents Defendants (collectively, “RCN”) in the above-referenced matter.

Pursuant to the Court’s March 8, 2022 Letter Order (ECF No. 205), we are writing to confirm that RCN is submitting certain documents to the Court today for *in camera* review. For ease of reference, RCN has included a spreadsheet that lists the selected documents and the nature of RCN’s privilege claims.

For context, RCN’s Digital Millennium Copyright Act (“DMCA”) safe harbor policy was developed and implemented with inside and outside counsel, and attorneys have been directly overseeing the enforcement and evolution of the policy since that time. As a result, it can be difficult to draw the line between privileged and non-privileged communications regarding DMCA issues, as the communications almost always reflect or solicit confidential attorney advice to some degree. RCN therefore remains concerned about potential waivers of attorney-client privilege or work product protection through the disclosure of internal DMCA-related communications.

RCN would welcome the opportunity for oral argument to address these matters in more detail. Additionally, in the event the Court determines that any of the documents submitted for *in camera* review should be produced, RCN respectfully requests that the Court also enter an order pursuant to Fed. R. Evid. 502(d), providing that the disclosure of such materials does not waive any applicable privilege or protection in this or any other federal or state proceeding.

Respectfully Submitted,

/s/ Edward F. Behm, Jr.
Edward F. Behm, Jr.

CC: All counsel of record via ECF